HIGH COURT OF CHHATTISGARH: BILASPUR

CORAM: **HON'BLE SHRI S.R. NAYAK, CJ &**
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MISCELLANEOUS APPEAL (C) NO. 428/2006

APPELLANT — United India Insurance Company Limited, Divisional Office, Jail Road, Raipur (CG).

Versus

RESPONDENTS

1. Tukaram Sahu, S/o. Bhauram Sahu, aged about 30 years, R/o. village Jintara, PS Mahasamund, Dist. Mahasamund (CG).
2. Jhumuk Prasad Dubey, S/o. Late Badri Prasad Dubey, R/o. Village Ratakat, PS Arang, Tehsil & Dist. Raipur (CG).
3. Neera Bai, w/o. Late Ramlal, aged about 45 years.
4. Sukhrawaro Bai, D/o. Late Ramlal, aged about 15 years.
5. Thagia, S/o. Late Ramlal, aged about 15 years.
6. Santosh, s/o. Late Ramlal, aged about 24 years.
7. Chetan, S/o. Late Ramlal aged about 12 years.

(Sl. No. 4, 5 & 7 Minors through their mother Neera Bai (respondent no.3) (All R/o. Bazarpara, Ward No.12, Tumgaon, P.S. Tumgaon, Dist. Mahasamund (CG).

PRESENT:

Shri Sanjay S. Agrawal, counsel for the appellant.

ORAL O R D E R

(Dated 27/11/2006)

The following oral order of the Court was passed by Vijay Kumar Shrivastava, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth, "the Act") has been filed against the award dated 18/09/2006 passed by Ist Additional Motor Accident Claims Tribunal, Mahasamund, in Claim Case No. 245/2005 whereby award of Rs.4,22,000/- (Rupees four lakhs and twenty-two thousand) has been passed in favour of respondents No. 3 to 7 against respondents No.1 & 2 and the appellant.

Factual matrix of the case, in brief, is that on 12/04/2005 Ramlal (since deceased) was returning to his village Tumgaon by his Bullock-cart and when he reached near the village Amawas, respondent No.1 driving Tractor attached with its Trolley bearing registration No. CG-04-ZD-3795 and CGT-04-ZC-6317 in a rash and negligent manner dashed the Bullock-Cart. The said vehicle is owned by respondent No.2 and was insured with the appellant. Ramlal sustained injuries and succumbed to those. Respondents No. 3 to 7 filed an application under Section 166 of the Act, claiming compensation of Rs.16,00,000/- (Rupees sixteen lakhs only) on account of death of Ramlal against appellant and respondents No. 1 & 2. Respondent No.2 did not file the written statement whereas respondent No.1 though admitted that accident took place by the aforesaid vehicle when he was driving the same, but contested the claim stating that deceased himself was responsible for the accident. Appellant denied the claim *inter alia* on the ground that the accident did not take place with Tractor

and Trolley, but was caused by some unknown vehicle "Metador" and the claim has been filed as a result of collusion by claimants with the driver and owner of the aforesaid Tractor and Trolley.

Learned Tribunal after evaluating the evidence on record, held that respondent No.1 driving Tractor and Trolley in a rash and negligent manner caused the accident as a result of which Ramlal died and after assessing the compensation passed the award.

Learned counsel for the appellant relying on the judgment rendered by the Hon'ble High Court of Karnataka in ***United India Insurance Co. Ltd., Vs. Hussain Sab and others***[1] vehemently contended that soon after the accident, first information report was lodged by one Budharu, disclosing that some unknown vehicle "Metador" has dashed deceased's Bullock-Cart. Crime was registered and ultimately Police dropped the case as vehicle and driver could not be traced out. Therefore, the finding arrived at by the Tribunal is erroneous and perverse.

From perusal of award, it is clear that eye-witness Keshav (AW/2) who was traveling in the Tractor & Trolley No. CG-04-ZD-3795 and CGT-04-ZC-6317, has witnessed the incident and categorically stated that driver of the Tractor - respondent No.1 could not control the Tractor, caused the accident, thereafter taking the vehicle fled away from there and as a result of that accident Ramlal instantaneously died on the spot. His oral evidence is duly corroborated with admission of driver of Tractor – respondent No.1. To rebut the evidence adduced by claimant, appellant could not adduce any evidence. Even the first

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information report which is not a substantive piece of evidence has not been got proved by writer of the document or by the informant Budharu. In absence of any evidence, to rebut the evidence adduced by the claimant duly admitted by driver of the vehicle, learned Tribunal very correctly held that respondent No.1 driving the Tractor & Trolley in a rash and negligent manner caused the accident as result of which Ramlal died. The case ***United India Insurance Company Ltd.*** (supra) relied upon by the appellant is distinguishable on the facts of the case.

No other points have been raised during arguments.

In the result, the appeal being devoid of merit is liable to be dismissed and is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge

Raju